

Exhibit 1

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO

3
4 FUSE CHICKEN, LLC,
5 Plaintiff,

6
7 vs. Case No. 5:17-cv-01538-SL

8
9 AMAZON.COM, INC.,
10 Defendant.

11 -----
12
13 ***HIGHLY CONFIDENTIAL***

14
15 Videotaped deposition of
16 DANIEL C.K. CHOW
17 December 20, 2018
9:13 a.m.

18
19 Taken at:
Ulmer & Berne, LLP
20 65 East State Street, Suite 1100
Columbus, Ohio

21
22 Kimberly A. Kaz,
23 RPR, Notary Public
24 Job No. 3173877
25 Pages 1 - 295

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1 THE VIDEOGRAPHER: We're on the
2 record at 9:13. Today's date is the
3 December 20th, 2018. This is the matter of
4 Fuse Chicken versus Amazon.com, Inc. This
5 deposition is taking place in Columbus, Ohio.

6 Would counsel please identify
7 themselves for the record?

8 MR. WATNICK: David Watnick of
9 Covington & Burling for Amazon.

10 MR. HALPER: Rick Halper of McKool
11 Smith for the plaintiff.

12 THE VIDEOGRAPHER: Court reporter,
13 please swear in the witness.

14 DANIEL C.K. CHOW, of lawful age,
15 called for examination, as provided by the
16 Federal Rules of Civil Procedure, being by me
17 first duly sworn, as hereinafter certified,
18 deposed and said as follows:

19 EXAMINATION OF DANIEL C.K. CHOW

20 BY MR. WATNICK:

21 Q. Good morning.

22 A. Good morning.

23 Q. Can you please state your name for
24 the record?

25 A. Daniel Chow.

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1 Vague.

2 THE WITNESS: -- in this particular
3 case, Fuse Chicken had its manufacturing
4 facilities in China, and so I think that
5 particular fact leads me to conclude that for
6 Fuse Chicken, because its manufacturing --
7 legitimately manufacturing in China exposed
8 itself subject to the risk, that counterfeiters
9 in China would counterfeit its products.
10 That's not true of every product that's sold on
11 Amazon, as far as I know.

12 Q. Is that true on every product sold
13 on Amazon, the authentic version of which is
14 manufactured in China?

15 A. I wouldn't say every product, but I
16 would imagine that would be true with many of
17 those products, yeah.

18 Q. You understand that Fuse Chicken
19 has what it considers to be examples of the
20 allegedly infringing product sold on
21 Amazon.com?

22 A. Yes.

23 Q. Is that right?

24 A. Yes.

25 Q. Does your opinion relate in any way

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1 to whether those products are or are not
2 infringing?

3 MR. HALPER: Objection to form.
4 Lacks foundation. Vague.

5 THE WITNESS: The opinions that I
6 gave right now, no.

7 Q. And the opinions in your report?

8 MR. HALPER: Objection. Form.
9 Lacks foundation. Asked and answered.

10 THE WITNESS: I'm not sure what
11 you're asking, but I would say in giving the
12 context for counterfeiting in China, no.

13 Q. You're not offering an opinion that
14 Amazon committed willful infringement, are you?

15 MR. HALPER: Objection. Form.

16 THE WITNESS: No.

17 Q. What evidence have you seen that
18 the examples of infringing products Fuse
19 Chicken has in its possession were made in
20 China?

21 A. Could you repeat the question,
22 please?

23 Q. You've seen some example products
24 that Fuse Chicken says were sold on Amazon.com
25 that it alleges are infringing its intellectual

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1 property, right?

2 A. Yes.

3 Q. And what evidence have you seen
4 that those examples were manufactured in China?

5 A. The examples I saw are cited in my
6 report. Those are the exhibits.

7 Q. Yeah. Where in your report is
8 that?

9 A. There are two exhibits. One is the
10 one that we first -- that is the Footnote 5
11 that -- that I referred to before. There's
12 Footnote 6, which has to deal with Ideal
13 Electronic Technology. There was also the
14 Footnote 4, which is the exhibit dealing with
15 cable data.

16 Q. What is cable data?

17 A. Cable data is a product which is
18 made by a company in Shenzhen, China, which
19 copies the design of the Fuse Chicken product.

20 Q. When you say "copies the design of
21 the Fuse Chicken product," what do you mean?

22 A. Well, I think -- I think you could
23 take a look at the exhibit. I think it would
24 be pretty clear if you took a look at the
25 exhibit and saw a photograph of the product.

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1 infringement?

2 A. Well, it -- well, how much
3 knowledge -- what kind of knowledge did Amazon
4 have, you know.

5 Q. Knowledge of what?

6 A. Of the activities of the
7 manufacturer. Did it have a track record with
8 this particular manufacturer? So there are a
9 lot of things that go into it. It's possible.
10 That's all I can say.

11 Q. That just by allowing the sale?

12 MR. HALPER: Objection.

13 Q. Or, I'm sorry. Just by allowing
14 them to sell?

15 A. I wouldn't --

16 MR. HALPER: Objection. Misstates
17 the testimony.

18 THE WITNESS: Yeah.

19 MR. HALPER: And lacks foundation.

20 THE WITNESS: Again, it's -- it's
21 very difficult to answer. It's very difficult
22 to answer that question.

23 Q. Are you aware of any Amazon actions
24 related to this case that you believe amounted
25 to trademark infringement?

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1 MR. HALPER: Objection. Vague.
2 Lacks foundation.

3 THE WITNESS: What do you mean by
4 that?

5 Q. Are you aware of any Amazon
6 activities that you believe infringed Fuse
7 Chicken's trademarks?

8 A. You know, I was -- I was not asked
9 to be an expert on that particular issue, and I
10 have not given that any thought.

11 Q. So you can't speak to whether
12 Amazon had knowledge that a certain activity
13 might have been trademark infringing?

14 MR. HALPER: Objection. Vague.

15 THE WITNESS: Well, again, I was
16 not asked to look into that. I didn't
17 really -- haven't really thought about that.

18 Q. Same is true for the copyright
19 claims or the deceptive trade act -- deceptive
20 trade practices claims?

21 MR. HALPER: Objection. Vague.
22 Compound. Lacks foundation.

23 THE WITNESS: I was not -- I was
24 not asked to study those and give an opinion on
25 that.

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1 Q. I'm going to continue on Page 10 of
2 your report. You have the list of materials
3 considered. I think we've discussed a few
4 things, which were left off this list. Is
5 there anything else that's missing?

6 MR. HALPER: Objection. Lacks
7 foundation. Misstates testimony.

8 THE WITNESS: Could you clarify
9 what you mean by that?

10 Q. Were there any materials you
11 considered in forming your opinions and writing
12 your report that are not included on this list?

13 A. Not -- not that I recall.

14 Q. You have an entry on the list for
15 internet research. Do you see that?

16 A. Yes.

17 Q. And what websites did you visit
18 that are not independently listed here?

19 A. I don't recall.

20 Q. Did you visit websites that are not
21 on this list?

22 A. Possible, yes.

23 Q. But you don't know what they were?

24 A. I cannot recall. I cannot recall.

25 Q. You refer to Amazon's second

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1 reputable news organizations and publications,
2 and that they would vet the statements which
3 are being made in stories of this type, check
4 the accuracy of the factual assertions in these
5 articles. I believe they will -- also would
6 give Amazon a chance to respond, and I believe
7 that in one of the articles, Amazon was invited
8 to give comment, but declined. So I have no
9 reason to believe that these articles are
10 inaccurate.

11 Q. Are you aware of Amazon disputing
12 the statements in that article?

13 MR. WATNICK: I'm going to object
14 as beyond the scope of the report.

15 Q. You can answer.

16 A. I am not aware that Amazon
17 objected, and I do recall that Amazon was
18 invited to give comment in one of the articles
19 and declined.

20 Q. You were also asked, at least with
21 respect to one of the articles, maybe both,
22 whether you thought the author knew what he was
23 talking about. Do you recall that?

24 A. Yes, I do.

25 Q. Do you believe that the authors of

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1 these articles knew and understood what they
2 were talking about when they wrote what they
3 wrote in those articles?

4 A. Yes, I do. I believe that
5 reputable news organizations and publications
6 such as these would hire professionals who were
7 competent and had knowledge of the subject
8 matter on which they were writing. I believe
9 that these -- this indicates to me that these
10 people knew what they were talking about, and I
11 believe that they do.

12 Q. Were you asked by Fuse Chicken or
13 its counsel, in connection with your work and
14 report in this case, to quantify the amount of
15 counterfeiting of Fuse Chicken products?

16 MR. WATNICK: Object. Beyond the
17 scope of the report.

18 THE WITNESS: No, I was not.

19 Q. Do you recall earlier, you
20 testified that you -- it is your opinion that
21 you doubt that you -- that the cable data
22 products were manufactured in locations outside
23 of China?

24 A. Yes.

25 Q. What was the basis for your opinion

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1 in that regard?

2 A. Based on my experience,
3 counterfeiters usually arise in proximity to
4 the original legitimate manufacturer. They
5 arise in China in proximity to the original
6 manufacturer because of the prevalence of
7 counterfeiting and a business and legal culture
8 which supports it.

9 Based upon my experience, I
10 would -- I would say that the counterfeiter
11 would be one in proximity to the original
12 manufacturer, meaning that they would be in
13 China, and it would seem very unlikely to me
14 that there would be a counterfeiter in the
15 United States, based upon those factors.

16 Q. And are you aware of evidence
17 suggesting that the cable data products were
18 made outside of China?

19 A. No.

20 Q. Why are your opinions that you've
21 offered and -- today and indicated in your
22 report relevant to this case?

23 A. Well, in order to understand Fuse
24 Chicken's case, it is necessary to put the case
25 in the larger context, and the larger context

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1 I declare under penalty of perjury
2 under the laws that the foregoing is
3 true and correct.

4
5 Executed on February 15, 2019,
6 at Columbus, Ohio.

7
8
9
10 Daniel C. R. Chow

11
12 WITNESS SIGNATURE

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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Fairfield.)

I, Kimberly A. Kaz, RPR, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DANIEL C.K. CHOW, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 16th day of January, 2019.



Kimberly A. Kaz, RPR, Notary Public
within and for the State of Ohio
My commission expires March 31, 2023.